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SHERILLE S. HARRIS, Appellant)	
)	
and)	Docket No. 04-1552
)	Issued: August 5, 2005
U.S. POSTAL SERVICE, POST OFFICE,)	
Maryland Heights, MO, Employer)	
)	

Oral Argument July 7, 2005

Miriam D. Ozur, Esq., for the Director

Before:

JURISDICTION

ISSUE

FACTUAL HISTORY

On June 21, 1997 appellant, then a 30-year-old mail handler, filed a traumatic injury claim alleging that on that date a mail cart struck her left shoulder and hand. She performed

limited-duty work from June 21 to July 25, 1997. Appellant's physician released her to return to full duty as of July 25, 1997.¹

On November 18, 1998 appellant filed a claim for a recurrence of disability on October 13, 1998.²

By letter dated December 7, 1998, the Office accepted appellant's claim for cervical, left shoulder and left wrist strains. It also found that the medical evidence established that the accepted conditions had resolved as of July 25, 1997.

By decision dated March 24, 1999, the Office denied appellant's recurrence claim on the grounds that the medical evidence did not establish that she sustained a recurrence of disability on October 13, 1998 causally related to her June 21, 1997 employment-related cervical, left shoulder and left wrist strains.

An April 23, 1999 arthrogram and May 23, 2000 magnetic resonance imaging (MRI) scan of appellant's left shoulder were reported as negative for a rotator cuff tear or any other abnormality.

In notes dated June 23, 2000, Dr. Fallon H. Maylack, an attending Board-certified orthopedic surgeon, stated that appellant could perform her regular job with no lifting over 25 pounds.

On September 24, 2002 appellant filed a claim for a recurrence of disability on May 6, 2002 causally related to her June 21, 1997 employment injury.

In Office notes dated May 6 to October 28, 2002, Dr. Maylack stated that appellant underwent surgery on May 15, 2002 consisting of repair of a torn left rotator cuff and anterior acromioplasty. He released her to light-duty work on July 15, 2002. On October 28, 2002 he recommended a permanent work restriction of no lifting over 25 pounds.

Appellant also submitted notes from a physical therapist.

By decision dated February 28, 2003, the Office denied appellant's recurrence claim on the grounds that the medical evidence did not establish that she sustained a recurrence of disability on May 6, 2002³ causally related to her June 21, 1997 employment injury.

Appellant requested an oral hearing before an Office hearing representative that was held on December 8, 2003.

¹ In a report dated July 25, 1997, Dr. David E. Turner, a specialist in occupational medicine, opined that appellant's cervical strain and left wrist and left shoulder strains had resolved.

² The record shows that appellant was working at the Bulk Mail Center in St. Louis, Missouri at the time of her June 21, 1997 employment injury. In July 1998 she transferred to the postal facility in Maryland Heights, Missouri where she worked as a clerk.

³ The Office indicated in its decision that the claimed recurrence date was September 24, 2002, rather than May 6, 2002. However, September 24, 2002 is the date that appellant filed her recurrence claim.

By decision dated February 24, 2004, the Office hearing representative affirmed the Office's February 28, 2003 decision.⁴

LEGAL PRECEDENT

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.⁵ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical rationale.⁶

Recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁷

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.⁸

ANALYSIS

Appellant sustained work-related cervical, left shoulder and left wrist strains on June 21, 1997. Her attending physician found that her accepted conditions had resolved as of July 25, 1997. Appellant filed a claim for a recurrence of disability on October 13, 1998 which was denied by the Office. She subsequently filed a claim for a recurrence of disability on May 6, 2002.

On June 23, 2000 Dr. Maylack stated that appellant could perform her regular job with no lifting over 25 pounds. There are no further office notes of record until May 6, 2002 at which time Dr. Maylack stated that appellant underwent surgery on May 15, 2002 consisting of repair

⁴ Appellant submitted additional evidence subsequent to the Office's February 24, 2004 decision. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal. However, this decision by the Board does not preclude appellant from submitting additional evidence to the Office with a request for reconsideration.

⁵ *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

⁶ *Lourdes Davila*, 45 ECAB 139 (1993).

⁷ 20 C.F.R. § 10.5(x).

⁸ *Walter D. Morehead*, 31 ECAB 188 (1979).

of a torn left rotator cuff and anterior acromioplasty.⁹ An April 23, 1999 arthrogram and May 23, 2000 MRI scan of appellant's left shoulder had revealed no rotator cuff tear or other abnormality. This suggests the possibility that a new injury necessitated the May 2002 rotator cuff surgery. None of Dr. Maylack's notes discuss appellant's June 21, 1997 employment injury or her job duties. He did not opine that appellant's medical condition and rotator cuff surgery in 2002 was causally related to her June 21, 1997 employment-related cervical, left shoulder and left wrist strains. Due to these deficiencies, Dr. Maylack's notes do not establish that appellant sustained a recurrence of disability on May 6, 2002 causally related to her June 21, 1997 employment injury.

Appellant failed to provide medical evidence, based on a complete and accurate factual background, which contained a well-rationalized opinion explaining how her recurrence of disability on May 6, 2002 was causally related to her June 21, 1997 employment injury. Therefore, she failed to meet her burden of proof and the Office properly denied her recurrence claim.

CONCLUSION

The Board finds that appellant failed to establish that she sustained a recurrence of disability on May 6, 2002 causally related to her June 21, 1997 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 24, 2004 is affirmed.

Issued: August 5, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

⁹ The Board notes that a rotator cuff tear has not been accepted by the Office as a work-related condition.